

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2007-006487-001 DT

04/09/2015

JUDGE M. SCOTT MCCOY

CLERK OF THE COURT  
T. Henninger  
Deputy

STATE OF ARIZONA

LAURA M RECKART

v.

AVTAR GREWAL (001)

JOSEPH A STAZZONE  
JEFFREY A KIRCHLER

CAPITAL CASE MANAGER

RULING

On January 16, 2015, the Court held a probable cause hearing pursuant to *Chronis v. Steinle*, 220 Ariz. 559, 208 P.3d 210 (2009). Following the hearing, the Court allowed counsel to file supplemental briefing and noted it would take this matter under advisement upon completion of briefing. The Court has now considered the testimony adduced and exhibits admitted at the evidentiary hearing, the arguments of counsel, and the supplemental briefs filed by both parties.

Defendant is charged with First Degree Murder and Burglary in the Second Degree. (Indictment, filed 4/3/07). The offenses are alleged to have been committed on or about March 29, 2007. On January 26, 2012, the State filed its Notice of Intent to Seek Death Penalty, Notice of Aggravating Factors and Witnesses (NOI), noticing the following aggravating circumstances: (1) the defendant has been or was previously convicted of a serious offense, whether preparatory or completed (A.R.S. §13-751(F)(2)); and (2) the defendant committed the offense in an especially heinous, cruel or depraved manner (A.R.S. §13-751(F)(6)).

*Prior serious offense – A.R.S. § 13-751(F)(2)*

In its NOI, the State alleged that the prior serious offense is the Burglary in the Second Degree offense charged in Count 2 of the Indictment. Defendant would be convicted of a serious offense if the trial jury finds him guilty of Count 2. The grand jury found probable cause to support each count of the Indictment when it returned a true bill.

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Defendant asserts that probable cause is lacking because he had a legal right to be in the marital home at the time of the murder and the State presented incorrect information to the grand jury that he did not have any legal interest in the home. These contentions fail because defendant essentially seeks a redetermination of the grand jury's finding of probable cause concerning the second-degree burglary offense. Although defendant is entitled to a *Chronis* hearing regarding all aggravators alleged in his case, this Court cannot reconsider the nature, weight or sufficiency of the evidence presented to the grand jury at this hearing. *Sanchez v. Ainley*, 234 Ariz. 250, ¶15, 321 P.3d 415 (2014) ("the defendant generally has no right to challenge the merits of a grand jury's probable-cause determination"); *Crimmins v. Superior Court, In and For Maricopa County*, 137 Ariz. 39, 668 P.2d 882 (1983).

The grand jury's finding of probable cause respecting Count 2 of the Indictment is sufficient to establish probable cause respecting the A.R.S. §13-751(F)(2) aggravator.

*Especially cruel manner - A.R.S. § 13-751(F)(6)*

At the evidentiary hearing, counsel for the State withdrew the allegation that the murder was especially heinous and depraved. Thus, the Court has considered only the cruelty prong of the (F)(6) aggravating circumstance.

The State presented the testimony of one witness, medical examiner John Hu. Dr. Hu testified that he was not involved in the initial autopsy but reviewed the report (Ex. 32) prepared by Dr. Davenport, a former medical examiner in the office, agreed with the majority of her opinion, and formulated his own opinion as to cause of death. He opined that the cause of death was manual strangulation. He explained that manual strangulation was strangulation that did not involve the use of any ligature. He determined the strangulation was manual because the injuries on the neck as shown in the autopsy photos were consistent with manual strangulation and inconsistent with use of a ligature and because no ligature was found at the scene.

The victim had a bruise on the front of her neck near her chin, a bruise on her forehead, petechiae on her cheeks, in both eyes, and under her skull, hemorrhage of the neck muscles, and the upper cartilage near her Adam's apple (the superior horn of the thyroid cartilage) on both sides were fractured. Dr. Hu stated that all of these injuries were consistent with manual strangulation and likely occurred before death. They were caused by the pressure being applied to the neck. He could not state how much pressure was applied or how long it was applied, but did note that the pressure would be higher to fracture the superior horns because they are not fractured in every case of manual strangulation. If pressure was applied evenly, a person would lose consciousness within 10 to 15 seconds, but it could have taken longer than that. The bilateral carotid artery has to be completely blocked for consciousness to be lost; if the blockage is not

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complete, losing consciousness could take longer. The brain starts to lose function due to the loss of blood to the brain, so the person would feel decreased alertness before becoming unconscious. Dr. Hu could not opine how long the victim was conscious.

The victim was found in the bathroom of her home, facedown, with her upper torso and head submerged in water in a bathtub. Dr. Hu ruled out drowning as the cause of death because there was not a large amount of water in her stomach or fluid in her lungs. He was unable to state if the victim was conscious at the time of being submerged, but opined that she was likely unconscious but still alive because the water was bloody. The victim had had heart surgery approximately the year before and was on Coumadin, an anti-coagulant, at the time of death, which caused her to bleed more.

Dr. Hu stated that the victim had two other injuries - a small laceration near her right eyebrow and a bruise on her right ear. These were likely caused by separate blunt impacts before death. He was unable to state what caused these injuries or whether they occurred at the same time. He also was unable to state which occurred first, the manual strangulation or the blunt force trauma to the right eyebrow/ear, but opined that both could have occurred in rapid succession.

Dr. Hu stated that there was no indication of any defensive injuries and nothing on the victim's arms to indicate there was a struggle.

A first degree murder is "especially cruel" if the victim consciously suffers mental anguish or physical pain before death, and the defendant knew or should have known that the victim would suffer. *State v. Snelling*, 225 Ariz. 182, ¶¶25-26, 236 P.3d 409 (2010); *State v. McCray*, 218 Ariz. 252, 259, ¶31, 183 P.3d 503, 510 (2008). "Although the victim does not need to be conscious for each and every wound inflicted, *State v. Sansing*, 206 Ariz. 232, 235 ¶7, 77 P.3d 30, 33 (2003), the (F)(6) aggravator cannot be found if the evidence on consciousness is inconclusive, *State v. Fulminante*, 161 Ariz. 237, 255, 778 P.2d 602, 620 (1988)." *Snelling*, 225 Ariz. at ¶25 (internal quotation marks omitted). The Arizona Supreme Court also has stated that not all stranglings are *per se* cruel. *Id.* at ¶26; *State v. Schackart*, 190 Ariz. 238, 248, 947 P.3d 315, 325 (1997).

Mental anguish includes a victim's uncertainty as to her ultimate fate. *State v. Lavers*, 168 Ariz. 376, 392, 814 P.2d 333, 349 (1991). In evaluating uncertainty, "[t]he length of time during which a victim contemplates her fate affects whether the victim's mental anguish is sufficient to bring a murder within that group of murders that is especially cruel." *State v. Prince*, 206 Ariz. 24, 27 ¶8, 75 P.3d 114, 117 (2003). *See also*, *State v. Soto-Fong*, 187 Ariz. 186, 204-05, 928 P.2d 610, 628-29 (1996)(finding the time of contemplation insufficient when the victims were killed in rapid succession). Evidence of a victim's pleas or defensive injuries can show that she suffered mental anguish. *Sansing*, 206 Ariz. at 236 ¶10, 77 P.3d at 34. Strangulations are not

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*per se* physically cruel absent specific evidence that the victim consciously suffered physical pain. *Schackart*, 190 Ariz. at 248, 947 P.2d at 325. However, the Supreme Court has held that a period of suffering from eighteen seconds to two to three minutes can be enough to warrant application of the cruelty aggravator. *Schackart*, 190 Ariz. at 248, 947 P.2d at 325. “The entire murder transaction, not just the final act, may be considered.” *McCray*, 218 Ariz. at ¶31.

The Court finds the evidence supports a finding that the victim suffered mental anguish. Dr. Hu opined that she was likely conscious for longer than 15 seconds, a sufficient period of time for her to contemplate her fate. She had two other injuries, the laceration above her right eyebrow and the bruises on her right ear that were not consistent with being strangled. These blunt force injuries are indicative of a struggle and likely would have caused her conscious physical pain. The defendant knew or should have known that the victim would suffer such pain from being beaten and strangled.

The Court finds the evidence presented at the hearing satisfies the A.R.S. §13-751(F)(6) aggravating circumstance for purposes of the Court’s probable cause finding.

IT IS ORDERED the State may proceed on the (F)(2) and (F)(6) (cruelty only) aggravating circumstances, because there is probable cause to support those aggravating circumstances.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.